

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PATRICK LAWRENCE
HENDERSON,

Defendant.

CR-09-74-GF-BMM

ORDER

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on July 17, 2019. (Doc. 59.) Patrick Henderson (Henderson) filed objections on July 31, 2019. (Doc. 60.) The Court reviews de novo findings and recommendations to which a party objects. 28 U.S.C. § 636(b)(1).

Judge Johnston conducted a revocation hearing on July 17, 2019. (Doc. 56.) The United States accused Henderson of violating his conditions of supervised release by (1) failing to report for substance abuse testing; (2) by failing to report for mental health treatment; and (3) by committing another crime. (Doc. 59.) Henderson admitted to all of the allegations. (Doc. 59 at 1.)

Henderson now opposes Judge Johnston's Findings and Recommendations. (Doc. 60.) Henderson argues that the recommended sentence if adopted, would violate his Fifth and Sixth Amendment rights because it exposes him to a total sentence that exceeds the statutory maximum prescribed for his firearms offense based on findings found by a judge by a preponderance of the evidence . (Doc. 60 at 3.) Henderson further argues that Judge Johnston's recommended sentence is substantively unreasonable. (Doc. 60 at 3.)

The Court has considered the 18 U.S.C. § 3553(a) factors and agrees with Judge Johnston's Findings and Recommendations. Henderson's violations of his conditions represent a serious breach of the Court's trust. Under the Conditions of Henderson's supervised release, he was to report for substance abuse testing, he was to report for mental health treatment (Doc. 29 at 4) and not commit another federal, state or local crime. (Doc. 29 at 3.) On November 14, 2018, Henderson failed to appear for a scheduled urinalysis and failed to appear for a scheduled mental health assessment on November 15, 2018. (Doc. 52 at 2.) On November 30, 2018, Henderson was arrested and charged with four felony counts of burglary and on June 24, 2019 was sentenced to one count of felony burglary and one count of theft. (Doc. 52 at 2.)

A revocation hearing was held before the undersigned on August 26, 2019. (Doc. 62) at which time the undersigned ordered supplemental briefing regarding

Defendant's objection to the findings and recommendations and the issues discussed at the hearing. (Doc. 62.) Supplemental briefing was reviewed and a second revocation hearing was held on September 9, 2019 (Doc. 70), at which time Henderson allocuted before the undersigned. The undersigned rejected Henderson's objections and found that Henderson's violations prove serious and warrants revocation of Henderson's supervised release. Judge Johnston has recommended that the Court revoke Henderson's supervised release and commit Henderson to the custody of the Bureau of Prisons for twenty-one months. (Doc. 59 at 4.) Judge Johnston further has recommended that 15 months of supervised release follow his custody period. (Doc. 59 at 4.)

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Docs. 126 and 54) are ADOPTED IN PART.

IT IS FURTHER ORDERED that Defendant PATRICK LAWRENCE HENDERSON be sentenced to custody for fifteen months, to run consecutive with the state court judgments, to be followed by 15 months supervised release.

DATED this 17th day of September, 2019.



Brian Morris
United States District Court Judge